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Forty-first session

SUMMARY RECORD OF THE 1059th MEETING

Held at Headquarters, New York,
on Wednesday, 10 April 1991, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. DIMITRIJEVIĆ (Vice-Chairman)

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Sri Lanka (continued) (CCPR/C/42/Add.9)

1. At the invitation of the Chairman, Mr. de Silva (Sri Lanka) took a place at the Committee table.

2. The CHAIRMAN invited the representative of Sri Lanka to resume his statement in reply to questions raised by members of the Committee on section IV of the list of issues.

3. Mr. de SILVA (Sri Lanka) said that the provisions of section 9 of the Prevention of Terrorism (Temporary Provisions) Act of 1979 were in keeping with article 9 of the Covenant. Detention was not used in an arbitrary manner. A detention order was issued when the Minister had reason to believe that a person was connected with or concerned in any unlawful activity constituting an offence as defined under the Act. The detention must be in accordance with the procedures laid down in sections 9, 10 and 13 of the Act. In accordance with article 9 (2) of the Covenant, a person so detained was informed of the reasons for his arrest.

4. Although the application of article 9 (3) of the Covenant was subject to a restriction, there were certain safeguards. While the Minister could order the detention of a person for a period not exceeding three months in the first instance and any such order could be extended for a period not exceeding three months at a time, the aggregate period of such detention, could not exceed 18 months. A detained person could lodge a complaint with an Advisory Board composed of retired judicial officers or lawyers, who had the necessary legal background to evaluate such complaints. Furthermore, any person deprived of his liberty under section 9 of the Prevention of Terrorism Act could challenge the validity of the detention order in a court of law. If he was found to be the victim of an unlawful arrest, the court had the power to award compensation. Although the requirements of article 9 (3) of the Covenant might not strictly be met because of the nature of the Advisory Board, Sri Lanka felt that that restriction was permitted and that the members of the Board were competent to perform judicial functions.

Liberty and security of the person (articles 9 and 11 of the Covenant) (section V of the list of issues)

5. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) clarification of the provisions of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 and information on allegations that the safeguards included in the Act had not been strictly observed, particularly in relation to arrests of

(The Chairman)

terrorist suspects; (b) the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence; the authorities that had the power to order such detention; (c) remedies available to persons (and their relatives) who believed that they were being detained wrongfully; the effectiveness of such remedies; (d) how speedily after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; and (e) information on detention in institutions other than prisons and for reasons other than crimes.

6. Mr. de SILVA (Sri Lanka) said that under the Prevention of Terrorism Act a special procedure had been instituted whereby the period within which a detained person must be brought before a magistrate had been extended from 24 hours to 72 hours. That had been necessary because of the practical problems involved in transporting persons from remote and inaccessible areas and attempts to rescue suspected terrorists. There was no obstacle to recourse to due process of law for challenging detention orders. The safeguards set forth in the Act, particularly with regard to arrests of suspected terrorists, could be enforced through fundamental rights applications or habeas corpus applications to the Supreme Court.

7. Under the Prevention of Terrorism Act, only the Minister concerned had the authority to issue a detention order. The Minister of Defence had the authority to order persons detained in connection with terrorist activities. Much of the information concerning such activities was of a highly confidential nature because it was obtained by undercover police agents or from suspected terrorists themselves. In order to protect the lives of such persons, that information could not be disclosed in an ordinary court of law. A detention order was valid for only three months. In order to renew such an order, the Minister was required to determine whether further detention was necessary. In any case, the total length of detention could not exceed 18 months in respect of the same offence. Conditional release from detention was possible in certain cases and restrictions were placed on freedom of movement and association. If an investigation indicated that a suspected terrorist could be released from custody, he might be released and kept under surveillance.

8. Remedies for wrongful detention were available through the procedure based on a writ of habeas corpus, a fundamental rights application or an application to the Advisory Board established under the Prevention of Terrorism Act. A person's family was informed of his arrest as soon as possible. Often persons were arrested away from the area where they resided and were reluctant to provide information on the whereabouts of family members in order to thwart police investigations. That naturally caused delays in informing family members of a person's arrest. Access to a detainee after his arrest might be denied during the initial investigation for a maximum period of approximately two weeks. Nevertheless, the reasons for denying such access and the duration of that period could be challenged in a court of law.

(Mr. de Silva, Sri Lanka)

9. There were two types of institutions in which detained persons were held. Persons who were considered dangerous and liable to escape were imprisoned under maximum security conditions. Detainees who were not considered to be deeply involved in unlawful activities were kept in detention camps, where the conditions were less rigorous than in prisons. That arrangement was necessary because of problems related to overcrowding. With regard to preventive detention, his country felt that in an emergency situation a person who was likely to commit a crime or had a criminal record might be kept in detention for a limited period. Although that might be unfair, it was considered dangerous to wait until a person committed further terrorist acts before arresting him. Such preventive detention was viewed as a measure for protecting society and was subject to specific conditions.

10. Ms. CHANET requested a further clarification of the phrase "any person connected with or concerned in any unlawful activity" in parts II and III of the Prevention of Terrorism Act. The reporting State should explain the type of cases or situations dealt with under those parts of the Act. It would be useful to know whether, under section 7 (1) and (2), a Magistrate could himself decide whether or not to release a person from custody. The phrase "any place" in section 7 (3) (a) of the Act should be clarified. Lastly, it was difficult to understand how the provisions of section 11 (5) fulfilled the requirements of article 9 (4) of the Covenant.

11. Mr. MAVROMMATIS said that sections 16 and 18 of the Prevention of Terrorism Act were quite sweeping and could impair guarantees for a fair trial. Accordingly, the authorities concerned should use extreme vigilance in applying those provisions. No reference was made in section 16 to statements elicited through threats or torture. The reporting State should indicate what status such statements might have in a trial. Under section 16 (2) of the Act the burden of proving that a statement was irrelevant was on the person asserting it to be irrelevant. Irrelevant statements were usually excluded by the judge. Further information should be provided on the weight accorded to a statement given in a case in which there was no cross examination and to the corroborated statements referred to in section 16 (3). The Committee would appreciate additional information on the practical application of section 18 (1) of the Act. The provisions of section 18 (2) concerning contradictory statements were very sweeping and could lead to miscarriages of justice. He hoped that the Attorney-General had the discretion to prosecute or refrain from doing so in that regard. The reporting State should indicate whether those provisions applied to the accused himself when he gave evidence as a witness or only to other witnesses.

12. Mr. PRADO VALLEJO said that there were serious problems in Sri Lanka affecting detained persons and their lawyers. There had been reports of threats and acts of violence against lawyers who had tried to defend certain accused persons. The reporting State should indicate what measures had been taken to ensure that lawyers could carry out their professional responsibilities without interference. There had also been reports of a

(Mr. Prado Vallejo)

number of arrests without detention orders. Elements of the security forces had detained persons suspected of submitting complaints against the security forces. The Committee would like to know whether such acts had been investigated. While measures must be taken to defend society, members of the security forces must not be allowed to carry out acts of State terrorism. Lastly, the reporting State should provide further information on how the power of the Minister to extend detention orders was actually used and indicate whether there were safeguards against the unjustified extension of such orders.

13. Mr. MYULLERSON stressed the need to ensure strict compliance on the part of security forces with laws and international human rights standards. With regard to the Prevention of Terrorism Act he inquired whether the habeas corpus rule applied in cases of preventive detention and how the lawfulness of such detention was monitored. Further information would be appreciated with regard to the application of section 14 (2) (a) (i) of the Act and whether those provisions had led to the suppression of information and abuses by the security forces.

14. Mrs. HIGGINS said that under article 9 (3) of the Covenant, it was simply not permissible to do away with the requirement that anyone arrested on a criminal charge should be brought promptly before a judge because that person was a potential offender or a suspected terrorist. Furthermore, the Advisory Board, referred to in section 13 of the Act, did not meet the requirments of article 9 (3) of the Covenant because it was not separate from the executive branch and had advisory, not judicial, powers. In addition, no time-limit was set for bringing a detained person before the Advisory Board.

15. Mr. LALLAH recalled that Sri Lanka had made a derogation under article 4 of the Covenant to articles 9 (3) and 14 (3) (b), but nevertheless felt that the comments of Mrs. Higgins were correct. He welcomed the information provided by Mr. de Silva concerning provisions for releasing suspected terrorists under certain conditions and on the two Privy Council decisions on what was reasonable in such matters, but he emphasized that the main standard against which any such measures were to be judged was the provisions of the Covenant, not the constitutions of other countries to which the Privy Council had referred in its decisions.

16. Section 9 (1) of the Prevention of Terrorism (Temporary Provisions) Act appeared to permit preventive detention. Since Sri Lanka had not made any derogation with respect to article 9 (4), it therefore appeared that sections 10 and 11 (5) of the Prevention of Terrorism (Temporary Provisions) Act, which ruled out judicial control of preventive detention, were incompatible with the Covenant.

17. Article 15 of the Covenant prohibited the retroactive criminalization of acts. However, section 31 of the Prevention of Terrorism (Temporary Provisions) Act had provided for extensive retroactivity, in that the

(Mr. Lallah)

definition of an unlawful act included "any act committed prior to the date of the passing of this Act, which act would, if committed after such date, constitute an offence under this Act". In part I, listing the offences themselves, the term "unlawful activity" was not used, but it was used in part III, relating to administrative detention and investigation by the police. The main defect of part III was that it did not comply with article 9 (4). He wondered whether section 12 of the Act, which provided that any person who contravenes or acts in breach of any prohibition or restriction imposed on him by an order under section 11 would be guilty of an offence, was not a circuitous way of criminalizing acts committed before the coming into force of the Act. He would have wished to see judicial intervention in such matters, but that was not provided for.

18. Mr. SADI said that the comments made on the Prevention of Terrorism (Temporary Provisions) Act reflected the overwhelming view that it was in need of a serious overhaul. There were more provisions in the Act that were in contravention of the Covenant than were in conformity with it. In particular, the language of the Act was so vague as to invite abuse. Examples of such language were to be found in sections 2 (1) (h), 5, 9, and 16. The latter section in its entirety could not possibly be seen as being in conformity with the spirit or the letter of the Covenant. The Committee fully appreciated the magnitude of the terrorist problem which Sri Lanka faced but could not condone its going to such lengths to re-establish law and order.

19. Mr. de SILVA (Sri Lanka) said that the Prevention of Terrorism (Temporary Provisions) Act had to be read in the context of Sri Lanka's legal system as a whole. When viewed in the overall legal context, the Act would not be seen to be in need of an overhaul, as had been suggested.

20. With regard to the question of justiciability of an order under the Prevention of Terrorism (Temporary Provisions) Act, he conceded that section 11 (5) might appear vague to someone not aware that the Sri Lankan judicial system was controlled by the principles of administrative law. No ministerial order made without jurisdiction, or made unreasonably, or expressed too broadly, would be considered valid. Section 11 (5) existed only to protect valid orders, but no court had ever been deterred from examining an order merely because of the existence of such an exclusion clause. The courts would examine the reasonableness of the order itself. If a court found that an order was unreasonable, the order was not valid. An invalid order was not an order at all and hence was not protected by the exclusion clause.

21. Section 12 was not retroactively operative. If a person was under detention for conduct declared unlawful under the Act and violated the restricting order placed upon him, his offence was prospective and not retrospective.

(Mr. de Silva, Sri Lanka)

22. The phrase "connected with or concerned in" in section 11 (1) was understood in Sri Lanka in terms of the law of conspiracy, and would be clearly understood by any court there to mean "criminally connected with or concerned in". For example, the victim of a terrorist act was certainly connected with it, but that was not to say that he would therefore be subject to section 11 (1). As to the broad wording of the section, it had to be remembered that under Sri Lankan law the notion of an "accessory after the fact" as a person criminally liable did not exist.

23. The language used in section 2 (h) reflected proper legal drafting and was intended to cover the concept of slogans written down but not actually uttered in speech, or even non-verbal messages such as drawings.

24. With regard to the comments made on sections 16 and 18, he drew attention to section 16 (2), where reference was made to section 24 of the Evidence Ordinance, which provided that any statement made as a result of inducement, threat or promise to be irrelevant. If an accused or suspected person wished to plead that his statement had been made as a result of inducement, threat or promise, then that was a matter within the accused's own knowledge, and the burden was on him to provide evidence of it.

25. There was considerable jurisprudence on whether or not the confession of a co-accused should be taken into account. Under ordinary law in Sri Lanka, any confession implicating a co-accused could not be used against that co-accused. Given the nature of terrorist activity, however, and the difficulty of obtaining information other than from accomplices Parliament had enacted a law admitting such testimony, but placing upon the courts the duty of extreme vigilance to ensure that an accused was not merely trying to shift the blame onto his accomplices. With that safeguard, the statement of a co-accused could be used for the purposes of establishing an offence, but the evidential weight attached to it would be minimal.

26. Section 18 (2) was intended to deal with perjury. If a witness made two statements under oath which contradicted one another, it might not be possible to determine which was false, but evidently one of them had to be, and therefore perjury had evidently been committed.

27. The purpose of section 7 (3) (a) was to permit a form of interrogation known as confrontation. Individuals accused of involvement in the same offence would be detained and interrogated separately, and then questioned about any discrepancies between their stories. In order to bring them together for that purpose, it had to be possible to move them, but normally, a detained person could not be moved from his place of detention without a court order. Similarly, it was sometimes necessary to take detainees to the scene of an event about which they were being questioned to interrogate them on the spot about the practical details of what they claimed to have seen or done. Such movement, too, was covered by section 7 (3) (a), but the prisoner had to be accompanied by, and remained the responsibility of, representatives of the prisons department.

(Mr. de Silva, Sri Lanka)

28. He was aware that there had been allegations by lawyers that, following their appearance in certain cases, they had received threats. However, 95 per cent of the lawyers making such allegations had used them as a basis for an application to live in a different country. Such lawyers no longer being resident in Sri Lanka, their allegations could not be investigated. Where lawyers making such allegations remained in Sri Lanka, their allegations were always investigated, and if necessary, police protection was provided for them. Indeed lawyers had even been killed, and the reasons, and the identity of the perpetrators, had been investigated in every case.

29. He fully agreed that State terrorism was no remedy for terrorism. But the concept of State terrorism had to be clearly defined. There was a distinction to be made, for example, between an undemocratic Government keeping itself in power by force of arms, on the one hand, and a State using legitimate force to combat terrorism, on the other. Occasional excesses by members of the security forces did not amount to State terrorism unless the State had connived at or encouraged them. If members of the security forces went beyond their duties, they must be punished, but to single out three or four instances of abuse in the case of a country like Sri Lanka, which had 30,000 troops in the field against terrorism, and to call that State terrorism, was very unfair.

30. He agreed with Mrs. Higgins that some of the provisions of section 9 (3) of the Prevention of Terrorism (Temporary Provisions) Act entailed a derogation from article 9 (3) of the Covenant, but the Government had given due notice of that derogation. The Prevention of Terrorism Act remained an emergency provision, intended to be temporary, whose extension was subject to a review by Parliament. The Act was therefore permissible under article 4 (2) of the Covenant.

31. Mr. Dimitrijević (Vice-Chairman) took the Chair.

Right to a fair trial (articles 14 and 15 of the Covenant) (section VI of the list of issues)

32. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) whether the independence and impartiality of the judiciary, was guaranteed through, in particular, legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; (b) whether there was a free legal aid and advisory scheme and how it operated; (c) information concerning the organization and functioning of the Bar in Sri Lanka; and (d) whether the possible conflict relating to the retroactivity of laws between articles 15 (1) and 13 (6) of the Constitution had been referred to the Law Commission and, if so, what its findings had been.

33. Mr. de SILVA (Sri Lanka), referring to section VI (a), said that articles 107 to 110 of the Sri Lankan Constitution provided adequate safeguards for the independence of the judiciary. Those articles fixed salaries and tenure, and insulated appointments and tenure from interference by the executive branch. Disciplinary control was not the province of the executive branch, but rather of an independent Judicial Service Commission composed of the Chief Justice and two Supreme Court judges. The judiciary was controlled by the Superior Courts, which were entrenched under the new Constitution. They could not be arbitrarily abolished and judges could be removed only under the procedures set forth in article 107 (2) and (3) of the Constitution. Moreover, interfering with the independence of the judiciary was an offence.

34. Referring to section VI (b), he described the legal aid scheme administered by the Bar Association of Sri Lanka, an independent organization of attorneys at law. The free legal aid scheme was funded by the State, and by the Asia Foundation and other foreign donors. Even so, its operation was hampered by financial constraints.

35. Legal aid scheme centres operating throughout the country assigned attorneys to advise litigants or appear in court on their behalf. Recently, members of the Bar Association of Sri Lanka, through the free legal aid scheme, had intervened in the majority of the fundamental rights and habeas corpus cases. The new President of the Bar Association had also proposed that its members should appear in at least three court cases every year, free of charge. In cases where persons were tried on indictment or for appeals of trials on indictment, counsel was assigned at the State's expense to defendants requiring assistance.

36. Referring to section VI (c), he said that the Bar Association of Sri Lanka, an independent body of attorneys at law, had branches throughout the country, and that its officers were elected. It maintained a dialogue with the Ministry of Justice on the administration of justice and expressed its views on legal issues of national importance. On numerous occasions, the Bar Association had agitated for its demands, and, as a result, engaged in dialogue with the executive, in order to obtain satisfaction.

37. Referring to section VI (d), he said that article 15 of the Constitution had been considered in the light of article 4 (2) of the Covenant at the All-Party Conference. Article 13 (6) provided for retroactivity where an act would have been considered criminal under the laws of civilized nations. In the case of terrorist activity, for example, recent experience had shown that conduct which was harmless under ordinary circumstances might well constitute a threat in time of emergency. Retroactivity made it possible to apprehend and punish perpetrators and thereby served as a deterrent. The policy had evolved in late 1989, in the wake of repeated terrorist violence aimed at paralysing certain services. In that terrorist campaign, seemingly innocent acts - a mark on a wall or a red handkerchief left at a doorstep - had actually been a means of communicating death threats. The Government was

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aware of the highly sensitive nature of the retroactivity provision and applied it with extreme caution.

Freedom of movement and expulsion of aliens (articles 12 and 13 of the Covenant) (section VII of the list of issues)

38. The CHAIRMAN read out section VII of the list of issues concerning the second periodic report of Sri Lanka, namely: the legal prohibitions governing the expulsion of aliens, and whether an appeal against an expulsion order had suspensive effect.

39. Mr. de SILVA (Sri Lanka) drew the Committee's attention to the information given on page 24 of the document submitted by his delegation in response to the list of issues.

Right to privacy (article 17 of the Covenant) (section VIII of the list of issues)

40. The CHAIRMAN read out section VIII of the list of issues, namely: information concerning the law and practice relating to permissible interference with the right to privacy.

41. Mr. de SILVA (Sri Lanka) drew attention to page 24 of the written replies provided to the Committee. Sri Lanka had no specific law which embodied the provisions of article 17 of the Covenant, but it did have laws on defamation, secrecy of declarations for inland revenue and similar measures to protect privacy. As it moved towards the computerization of records and documents, Sri Lanka was studying laws on data protection in the United Kingdom and other countries. The right to privacy was also covered by the proposed Seventeenth Amendment to the Constitution and by ordinary domestic legislation.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section IX of the list of issues)

42. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) whether Buddhism enjoyed privileged treatment compared to other religious denominations; and (b) the legal regime under which the press and the mass media operated in Sri Lanka, and the controls exercised on the freedom of the press and the mass media under Sri Lankan law.

43. Mr. de SILVA (Sri Lanka), referring to section IX, drew the Committee's attention to page 25 of his delegation's written replies and said that freedom to manifest one's religion was guaranteed by the Constitution. The Constitution also sought to avoid religious conflict by stipulating that different religions must establish their places of worship and engage in other manifestations of religion at a certain distance from each other. There was

(Mr. de Silva, Sri Lanka)

no official State religion, nor any compulsory adherence to a particular religion. The Constitution did provide for the primacy of Buddhism, meaning, in practice, that when State functions were opened by religious ceremonies, Buddhist rituals were performed first.

44. Referring to section IX (b), he drew attention to page 25 of his delegation's written replies. The Sri Lankan Constitution guaranteed freedom of speech and a Press Council supervised press activities, on the premise that peer supervision was preferable to governmental control. News coverage of terrorist acts was restricted only if it was liable to trigger a strong backlash, and, even in those cases, the decision was taken by the Press Council, not the Government.

Freedom of assembly and association (articles 21 and 22 of the Covenant) (section X of the list of issues)

45. The CHAIRMAN read out section X of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) information about the number, membership, organization and effectiveness of trade unions in Sri Lanka; (b) a description of the relevant laws and practices relating to the establishment of political parties and concerning public meetings; and (c) the impact if any, of the lengthy period of the state of emergency on the exercise of the right to freedom of assembly and association.

46. Mr. de SILVA (Sri Lanka), referring to sections X (a) and X (b), drew the Committee's attention to pages 25 and 26 of his delegation's written replies.

47. Referring to section X (c), he said that, recently, Provincial Council, Presidential and Parliamentary elections had been held throughout the country and that, except in certain parts of the north and east, local authority elections would be held in May 1991. Emergency regulations were temporarily suspended whenever the Commission of Elections found that they hindered the election process.

Protection of the family and children (articles 23 and 24 of the Covenant) (section XI of the list of issues)

48. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) information on the law and practice relating to the employment of minors; (b) illustrations of the activities undertaken by the Presidential Commission on Youth Unrest; (c) whether children born out of wedlock had the same rights as children born in wedlock; (d) whether the Children's Charter mentioned during consideration of the initial report had been adopted and, if so, relevant details concerning its impact on the enjoyment of the rights of the child under the Covenant.

49. Mr. de SILVA (Sri Lanka), referring to sections XI (a) and (b), drew attention to page 27 of his delegation's written replies. Referring to section XI (c), he stressed that legitimate children took the father's nationality. He believed that to be the practice in most other jurisdictions as well.

50. Referring to section XI (d), he said that the Children's Charter had indeed been signed, and that Sri Lanka was studying the World Declaration on the Survival, Protection and Development of Children and the Plan of Action.

Right to participate in the conduct of public affairs (article 25 of the Covenant) (section XII of the list of issues)

51. The CHAIRMAN read out section XII of the list of issues concerning the second periodic report of Sri Lanka, namely: equitable access to public service by members of minority groups and persons holding differing political opinions.

52. Mr. de SILVA (Sri Lanka) said that there were no restrictions on citizens seeking public employment, but that ethnic recruitment quotas had been introduced at both the national and provincial levels. Those measures had been challenged and the matter was currently before the Supreme Court. He expected them to be adopted as law in the near future.

Rights of persons belonging to minorities (article 27 of the Covenant) (section XIII of the list of issues)

53. The CHAIRMAN read out section XIII of the list of issues concerning the second periodic report of Sri Lanka, namely: (a) measures taken to guarantee the rights of ethnic and religious minority groups and the assistance given to them to preserve their cultural identities, languages and religions; and (b) the representation of minority groups in Parliament and the Provincial Councils.

54. Mr. de SILVA (Sri Lanka) drew the Committee's attention to page 28 of his delegation's written replies. Referring to section XIII (b), he said that minorities were adequately represented in Parliament.

55. Mr. WENNERGREN referred to the first paragraph of the Sri Lankan delegation's written reply on the right to privacy. He wondered whether Sri Lankan legislation also afforded protection against hidden microphones, optical devices, and other forms of electronic surveillance which countries often used to investigate espionage.

56. Referring to section X (c), he wondered, in the light of Sri Lanka's recent difficulties, whether it had been possible to exercise the right of freedom of assembly, to what extent and under which circumstances.

(Mr. Wennergren)

57. He wished to know whether article 14 (a) of the proposed Seventeenth Amendment to the Constitution protected the freedom to seek information - a right specifically guaranteed by article 19 of the Covenant. Some indication should be given as to whether citizens and the press would have access to government information in an open society, or whether such access would be restricted by a public information law or official secrets law.

58. Mr. SADI asked whether specific practical measures had been taken in order to achieve harmony among the country's major religious groups. He wished to know whether Sri Lanka had ratified the United Nations Convention on the Rights of the Child and, referring to section XI (c), whether children born out of wedlock enjoyed the same rights as children born in wedlock.

59. Mr. ANDO referred to the right to freedom of expression and asked whether foreign journalists were subject to the same restrictions as Sri Lankan journalists in covering ethnic conflicts. That was particularly relevant in view of Mr. de Silva's remarks on the control of news reports liable to provoke a widespread backlash.

60. He inquired about regulations, and in particular, restrictions on the production and release of programmes on State-run television. He asked whether the Government had any plans to promote private ownership of television broadcasting facilities.

61. The Official Secrets Act differed from the British act in its broad definition of "official secrets". Since, under the Sri Lankan Act, any secret information made public without proper authorization was presumed harmful to State interests, he would appreciate clarification as to who bore the burden of proof.

62. Noting certain anti-union activities by employers, he asked whether Sri Lankan law prohibited discrimination in hiring and promotion and prescribed civil remedies in the event of violations.

63. Mr. MYULLERSON requested additional information on article 13 (5) of the proposed Seventeenth Amendment to the Constitution. It was not clear that that article was entirely consistent with article 14 of the Covenant on the presumption of innocence. Specifically, he wished to know more about the "facts" referred to in the article. He, too, would appreciate more information on the State monopoly of the mass media. He wondered who owned and controlled the media. It would be interesting to know whether programmes were aired in the various national languages, or even in minority languages which were not official languages under the Constitution. Lastly, the Sri Lankan delegation should provide information on any cases in which the publication of newspapers had been banned.

64. Mr. de SILVA (Sri Lanka) said that there was no State control of the mass media. One national newspaper was owned by the State; the rest by private parties. There were only two television stations; one had always been owned by the State, and the second had had to be sold to the State because its owners could not afford to keep it going. A private company had applied to set up a television station, but had not yet found the finance required. Broadcasting was in English, Sinhala and Tamil, because all citizens of Sri Lanka would understand at least one of those languages. There were more programmes in English than were justified by the proportion of the population speaking English, because programmes were bought and there were not sufficient funds to dub all of them. There was no prohibition on receiving broadcasts from other sources, and some people possessed satellite dishes.

65. The principles of the Official Secrets Act were based on British law and intended to operate in much the same way.

66. Turning to the question of any shifting of the burden of proof, he said that there had been no change in the presumption of innocence. It remained incumbent upon the prosecution to establish guilt beyond reasonable doubt, but when the accused had special knowledge of facts but did not plead it he was presumed not to possess it, so the burden of establishing, for example, that he had acted while of unsound mind or as a result of provocation rested with the accused, who needed only to establish a balance of probability.

67. No distinction was made in Sri Lanka between foreign and local journalists, and no restrictions were placed upon the activities of the former if they entered Sri Lanka declaring themselves to be journalists, rather than pretending to be tourists.

68. Except under temporary emergency legislation, trade union activity was not restricted outside the free trade zone, where foreign companies which had opened factories had secured special non-trade union terms on the grounds that the wages they paid were higher than elsewhere. Outside the free trade zone a person could go to court in defence of his right to engage in trade union activity.

69. The only difference in treatment between children born in and out of wedlock was that if a child born out of wedlock wanted to claim a share of his father's property he had to establish paternity; in the case of a child born in wedlock, paternity was presumed.

70. No affirmative action was taken by the State on behalf of religious amity because it would be regarded by some as interference in their religious rights. However, it was undertaken by private organizations with State support. As for the right to information, the Government of Sri Lanka had decided that it could be provided subject to the interests of privacy, State privilege or official secrets.

(Mr. de Silva, Sri Lanka)

71. In answer to the question concerning electronic surveillance, he stated that when the laws of Sri Lanka were drafted the only available method of surveillance was telephone tapping. The country was too poor to afford more sophisticated devices, and probably did not have enough secrets to justify the use of such equipment anyway, but it would certainly be illegal to operate the more modern surveillance devices to which the question had referred. The Government of Sri Lanka was, in any event, aware of the need to update its legislation to cover data protection.

72. As for the right of assembly, country-wide elections had recently been held with total freedom of assembly. Only during the height of the emergency had there been restrictions, and they had since been removed.

73. Mr. Pocar resumed the Chair.

74. Mr. ANDO said that the difficult conditions which Sri Lanka was facing made it harder to protect human rights, but efforts had to be made to comply with the provisions of the Covenant. Some provisions of the proposed Seventeenth Amendment to the Constitution complied with the provisions of the Covenant, while others, such as the grounds of discrimination, were not quite the same; there were grounds that were not in the Covenant, and some of the grounds in the Covenant had no equivalent in the Seventeenth Amendment. An adjustment had to be made. Mr. de Silva had said that the retroactive application of the criminal law had been necessary because of its deterrent value, but deterrence would also be achieved by an improved police system and better education and social services. The protection of human rights required good social and economic conditions, and to achieve those, both order and security were needed. In future, reports should be more substantial in order to permit a fuller and more sustained dialogue.

75. Mr. EL-SHAFEI said that although the report had been short, the delegation's answers to the oral questions had given him a better understanding of the constitutional and legal framework in which human rights were protected in Sri Lanka. However, the Sri Lankan Constitution referred only to certain treaties, and maintained silence with respect to the Covenant. Several of the provisions in the Constitution and in the proposed Seventeenth Amendment were based on articles of the Covenant but some rights appeared in a more limited form than in the Covenant itself, and in some instances the restrictions could lead to a derogation of rights which under the Covenant were non-derogable in any circumstances. Sri Lanka was experiencing difficulties, and the Government had taken measures to ensure the safety of the population against organized acts of violence, but there were gross and widespread violations of human rights in the course of dealing with violent opposition to the Government, such as extrajudicial executions, disappearances, torture, and the fact that thousands of political prisoners were still detained without trial. Changes in the Constitution were not likely in themselves to ensure that such violations would not continue, and the Government of Sri Lanka must ensure that all safeguards against abuses

(Mr. El-Shafei)

were rigorously enforced, by accounting for the violations committed thus far, compensating relatives and ensuring that those who were responsible were brought to justice. Finally, he wished to associate himself with the views expressed by other members of the Committee with regard to the Prevention of Terrorism (Temporary Provisions) Act.

76. Mr. MYULLERSON said that although the report had revealed almost nothing of the situation in Sri Lanka with regard to civil and political rights, he now had a much better understanding of the position. The main difficulty with regard to human rights arose because of the existence of the emergency, and his principal concern was the use of excessive force by the police and the armed forces. Firearms obviously had to be used to fight terrorists, but he had certain misgivings that even when disappearances were not caused by forces acting on behalf of the Government, they were condoned by them. However, the fact that the Government of Sri Lanka was cooperating with the United Nations Working Group on Enforced or Involuntary Disappearances was a welcome indication that it understood the problem and was trying to deal with it. It seemed to be the unanimous opinion of members of the Committee that the Government of Sri Lanka should reconsider the proposed Seventeenth Amendment to the Constitution in the light of the Covenant, and in particular to make sure that it contained only those restrictions and derogations that were allowed under the Covenant.

77. Mr. MAVROMMATIS said that despite the shortcomings of the report the Committee had an interesting and fruitful dialogue with the delegation, and fully understood and sympathized with the situation the Government of Sri Lanka was dealing with. Terrorism and attempts at secession were tearing the country apart, but there was a need for continuing vigilance to ensure that efforts to combat those forces did not involve the commission of excesses and that any complaints were promptly and efficiently investigated. The best way to achieve that was through the courts. He urged the Government of Sri Lanka to use the Covenant as a model for its proposed Seventeenth Amendment, and to expand upon it. If the emergency was to continue, further consideration should be given to the derogations involved in the relevant legislation.

78. Mr. HERNDL said that although the proposed Seventeenth Amendment to the Constitution was partly modelled on the Covenant, special care should be taken to bring its provisions into line with those of the Covenant, especially with regard to equality, and in respect of article 12 he regretted the removal of the word "race". He noted that the proposed constitutional amendment would improve remedies, but said special attention should be given to any restrictions on non-derogable rights. The Prevention of Terrorism (Temporary Provisions) Act should also be re-examined in the light of excessive use of force by members of the security forces.

The meeting rose at 1 p.m.